

EXHIBIT 1

(PART II)

(a) the actual cost incurred or (b) \$1,200 per person per visit. Borrower agrees to pay all reasonable brokerage, finder or similar fees or commissions payable in connection with the transactions contemplated hereby and shall indemnify, defend, and hold Lender harmless against all claims, liabilities, costs and expenses (including attorneys' fees and expenses) incurred in relation to any such claim by broker, finder or similar person alleging to have dealt with Borrower in connection with this transaction.

7.2 Loan Fee.

Borrower shall pay to Lender on or before the date of this Agreement a loan fee in the amount of Nine Hundred Seventy Thousand Dollars (\$970,000), which includes an application fee of Two Hundred Fifty Thousand Dollars (\$250,000) (which was previously received by Lender), a commitment fee in the amount of Two Hundred Fifty Thousand Dollars (\$250,000) and a closing fee in the amount of Four Hundred Seventy Thousand Dollars (\$470,000). Such fees are fully earned and non-refundable.

7.3 Draw Fees.

The first disbursement of funds for Hard Costs associated with construction and each such disbursement thereafter shall be referred to as a "Construction Disbursement." Borrower shall pay to Lender at the time of each Construction Disbursement a draw fee in the amount of One Thousand Dollars (\$1,000) per disbursement. Borrower hereby authorizes Lender to retain such fee from each such disbursement without further direction from Borrower.

7.4 Exit Fee.

Borrower shall pay to Lender a fee equal to the amount of \$485,000 (the "Exit Fee"), which Exit Fee shall be due and payable to Lender upon the earlier of (i) payment in full of the Loan for any reason (which shall be deemed to include Borrower's cancellation or termination of the Loan prior to any funding) or (ii) maturity of the Loan, whether by acceleration or otherwise. Prior to payment in full or maturity of the Loan, the Exit Fee shall be payable in installments of \$5,000 per Unit at the closing of the sale of any Unit sold in accordance with the terms of this Agreement (such amounts to be paid out of the Release Price paid to Lender in accordance with Section 14.9 until such time as Borrower has paid the Exit Fee in full). Any unpaid portion of the Exit Fee shall be due and payable on the first to occur of the acceleration of the Loan, the Maturity Date or payment in full of the Loan for any reason if prior to the Maturity Date.

7.5 Lender's Attorneys' Fees and Disbursements.

Borrower agrees to pay Lender's attorneys fees and disbursements incurred in connection with this Loan, including (i) the preparation of this Agreement, any intercreditor agreements and the other Loan Documents and the preparation of the closing binders, (ii) the disbursement and administration of the Loan and (iii) the enforcement of the terms of this Agreement and the other Loan Documents. The legal fees and disbursements to be paid by Borrower under this Section 7.5 and the legal fees and disbursements to be paid by Borrower under all other applicable provisions of this Loan Agreement and the other Loan Documents shall include the fees and expenses of Lender's inside counsel charged at a rate comparable to the rate which would be charged by a mid-sized Chicago law firm for an attorney with equivalent experience.

7.6 Time of Payment of Fees and Expenses.

Borrower shall pay all expenses and fees incurred as of the date of this Agreement upon execution hereof. At the time of the Opening of the Loan, Lender may pay from the proceeds of the initial disbursement of the Loan all reasonable Loan expenses and all fees payable to Lender. Lender may require the payment of outstanding fees and expenses as a condition to any disbursement of the Loan. Lender is hereby authorized, without any specific request or direction by Borrower, to make disbursements from time to time in payment of or to reimburse Lender for all reasonable Loan expenses and fees (whether or not, at such time, there may be any undisbursed amounts of the Loan allocated in the Budget for the same). Lender may charge any such disbursement to any applicable Budget Line Item or, if in Lender's judgment there is no available source of funds in the Budget, may require Borrower to pay excess expenses from Borrower's own funds. If the actual amount of charges are not ascertainable on the Loan Opening Date, then the Lender may charge the same to the Soft Cost Contingency or other applicable Budget Line Item, and Borrower shall pay upon demand any excess monies due.

7.7 Expenses and Advances Secured by Loan Documents.

Any and all advances or payments made by Lender under this Article 7 from time to time, and any amounts expended by Lender pursuant to Section 20.1(a), shall, as and when advanced or incurred, constitute additional indebtedness evidenced by the Note and secured by the Mortgage and the other Loan Documents and shall bear interest at the rate then applicable under the Note (including the Default Rate, when applicable).

7.8 Right of Lender to Make Advances to Cure Borrower's Defaults.

In the event that Borrower fails to perform any of Borrower's covenants, agreements or obligations contained in this Agreement or any of the other Loan Documents (and applicable grace or cure periods have expired, unless an emergency or other exigent circumstance exists, in which case Lender need not wait for such period to expire), Lender may (but shall not be required to) perform any of such covenants, agreements and obligations, and any amounts expended by Lender in so doing and shall constitute additional indebtedness evidenced by the Note and secured by the Mortgage and the other Loan Documents and shall bear interest at the Default Rate. Lender may expend any such reasonable amounts even if such advance would result in the balance owing to Lender exceeding the stated amount of the Note.

Article 8

NON-CONSTRUCTION REQUIREMENTS PRECEDENT

8.1 Non-Construction Conditions Precedent.

Borrower agrees that Lender's obligation to make the Loan is conditioned upon Borrower's delivery, performance and satisfaction of the following conditions precedent in form and substance satisfactory to Lender in its reasonable discretion on or before the date of this Agreement, except that Borrower need not have deposited with Lender the Additional Collateral as set forth in Section 8.1(t) until immediately prior to (and as a condition to) Loan Opening:

(a) Equity: Lender shall not be required to make any disbursements of the Loan until Borrower has provided evidence reasonably satisfactory to Lender that Borrower's equity invested in the Project for costs in the Budget (in addition to the Mezzanine Loan) is not less than \$13,730,000 in cash (together with any future Required Equity Investment increases, the "Required Equity Investment"). All such equity must be either (i) deposited with Lender on or prior to the date of this Agreement and disbursed prior to the first disbursement of Loan proceeds or (ii) used to pay Project costs contained in the Budget and approved by Lender with evidence of payment delivered to Lender prior to the first disbursement of Loan proceeds. For purposes of determining Borrower's Required Equity Investment in the Project, the Land shall be deemed to have a value equal to \$24,360,000. In all events, any equity contribution shall be subordinate to the rights of Lender and general unsecured creditors of Borrower. In order to qualify as equity, Borrower shall have received the funds as a contribution of capital from the Guarantors, The Wolff Company, LLC, Vanguard City Home, LLC or other equity contributors satisfactory to Lender in its sole discretion, and Borrower may not be indebted to the Guarantors or any other contributor for such contribution of capital.

Borrower's Required Equity Investment requirement shall be increased as a result of any changes to the Budget and as necessary to maintain the Loan In Balance as described in Section 11.1. Lender shall not be required to disburse any proceeds to reimburse Borrower for its Required Equity Investment unless the Lender has determined that the Borrower has invested amounts in excess of its Required Equity Investment.

In the event that Borrower or any other party invests more than its Required Equity Investment to pay costs in the Budget (excluding equity deposited as a result of the Loan being Out of Balance and excluding Additional Collateral applied to pay costs of the Project in accordance with Section 8.1(t)), the Commitment shall be permanently reduced by such excess deposit, unless the Borrower delivers to the Lender a written request for a refund of such excess within thirty days of such excess investment, but in no event shall such a request be required sooner than Loan Opening. At Loan Opening, Borrower may submit a draw request for reimbursement of amounts previously expended by Borrower for costs in the Budget in excess of the sum of (x) the amount of the Required Equity Investment and (y) the amount of the Mezzanine Loan and may direct that amounts so drawn by Borrower be retained by Lender as a portion of (or, if sufficient, all of) the Additional Collateral.

Notwithstanding the foregoing, so long as no Event of Default exists, Borrower may apply additional equity proceeds of a recapitalization of Borrower (or a direct or indirect member thereof) by Mezzanine Lender (or its Affiliate) or a fund advised by Mezzanine Lender (not derived from sales proceeds or income of the Project) to repay the Mezzanine Loan or any portion thereof and such repayment shall not reduce the Commitment.

(b) Fees and Expenses: Borrower shall have paid all of Lender's fees and expenses as required by Article 7 or elsewhere in this Agreement, to the extent due and payable.

(c) Title and Other Documents: Borrower shall have furnished to Lender the Title Policy together with legible copies of all title exception documents cited in the Title Policy and all other legal documents affecting the Project or the use thereof. The Title Policy shall be

subject only to the Permitted Exceptions. Any exception for the rights of Unit Purchasers shall only be permissible if the Title Company insures such rights are subordinate to the Mortgage.

(d) Survey: Borrower shall have furnished to Lender an ALTA/ACSM "Class A" Land Title Survey of the Project prepared by a licensed surveyor satisfactory to the Lender. Said survey shall be dated no earlier than ninety (90) days prior to the Loan Opening, shall be made (and certified to have been made) as set forth in Exhibit D attached hereto and made a part hereof. Such survey shall be sufficient to permit issuance of the Title Policy in the form required by this Agreement. Such survey shall include the legal description of the Land.

(e) Insurance Policies: Borrower shall have furnished to Lender, at least ten business days prior to the disbursement of any proceeds under the Loan, certificates evidencing that insurance coverages are in effect with respect to the Project and Borrower, in accordance with the Insurance Requirements attached hereto as Exhibit E and incorporated herein by reference as if fully set forth herein (or such other insurance coverages reasonably acceptable to Lender), for which the premiums have been fully prepaid with endorsements satisfactory to Lender. On or before the date that is thirty (30) days after the date hereof, Borrower shall provide a copy of the insurance policy with respect to the Project and Borrower in accordance with Exhibit E (the "Insurance Policy").

(f) No Litigation: Borrower shall have furnished evidence that no litigation or proceedings shall be pending or threatened that could or might cause a Material Adverse Change with respect to Borrower, any Guarantor or the Project.

(g) Utilities: Borrower shall have furnished to Lender (by way of utility letters or otherwise) evidence establishing to the reasonable satisfaction of Lender that the Project, when constructed, will have adequate water supply, storm and sanitary sewerage facilities, telephone, gas (if applicable), electricity, fire and police protection, means of ingress and egress to and from the Project and public highways and any other required public utilities and that the Project is benefited by insured easements as may be required for any of the foregoing.

(h) Attorney Opinions: Borrower shall have furnished to Lender an opinion from counsel for Borrower and Guarantors, in a form satisfactory to Lender, covering due authorization, execution and delivery and enforceability of the Loan Documents and also containing such other legal opinions as Lender shall reasonably require.

(i) Appraisal: Lender shall have obtained, at Borrower's expense, an Appraisal acceptable to Lender in all respects, in Lender's sole discretion. Acceptability shall be predicated upon, among other things: (a) a stated "as-is" value of the Land of no less than \$24,360,000; (b) a stated "bulk sale upon completion" value of the Project of no less than \$130,000,000; (c) a stated "gross sell-out" value of the Project of no less than \$165,000,000; and (d) a logical and consistent presentation conforming with federal regulations governing its content. Lender agrees the Appraisal it has received is acceptable to satisfy these requirements.

(j) Searches: Borrower shall have furnished to Lender current bankruptcy, federal tax lien and judgment searches and searches of all Uniform Commercial Code financing

statements filed in each place UCC Financing Statements are to be filed hereunder for Borrower and Guarantors, demonstrating the absence of adverse claims.

(k) Financial Statements; Tax Returns: Borrower shall have furnished to Lender current annual financial statements of Borrower and each Guarantor, each in form and substance and certified by such individual as acceptable to Lender. Borrower shall have furnished to Lender Guarantor's federal returns for the past two (2) years. Borrower and each Guarantor shall have signed and delivered to Lender an Internal Revenue Service Tax Return Verification Form (IRS Form 4506-T). Borrower and each Guarantor shall provide such other additional financial information as Lender reasonably requires, including financial statements of income and expenses for the Project and tax returns for all entities reporting the income and expenses on the Project.

(l) Price List Schedule: Borrower shall have furnished to Lender the Price List Schedule, as approved by Lender.

(m) Other Agreements: Borrower shall have delivered to Lender executed copies of any marketing, brokerage and development agreements entered into by Borrower in connection with the Construction and/or the sale of Units at the Project, each of which Lender shall have approved in Lender's reasonable discretion.

(n) Flood Hazard: Lender has received evidence that the Project is not located in an area designated by the Secretary of Housing and Urban Development as a special flood hazard area, or flood hazard insurance acceptable to Lender in its reasonable discretion.

(o) Zoning: The Title Policy shall include a 3.1 zoning endorsement (with parking) assuring that the completed Project will comply with zoning Laws.

(p) Organizational Documents: Borrower shall have furnished to Lender proof satisfactory to Lender of authority, formation, organization and good standing in the state of its incorporation or formation and, if applicable, qualification as a foreign entity in good standing in the state of its incorporation or formation, of all corporate, partnership, trust and limited liability company entities (including Borrower and each Guarantor) executing any Loan Documents, whether in their own name or on behalf of another entity. Borrower shall also provide an organizational chart as well as certified resolutions in form and content satisfactory to Lender, authorizing execution, delivery and performance of the Loan Documents, and such other documentation as Lender may require to evidence the authority of the persons executing the Loan Documents.

(q) No Default; No Material Adverse Change; No Condemnation; etc.: There shall be no uncured Event of Default by Borrower hereunder nor any event, circumstance or condition that with notice or passage of time or both would be an Event of Default; there shall have not occurred a Material Adverse Change in the financial condition of the Borrower or Guarantors, or the condition of the Project; and neither the Project nor any part thereof shall have suffered any casualty or be subject to any existing or threatened condemnation or taking by eminent domain proceeding or otherwise.

(r) Easements: Borrower shall have furnished to Lender all easements reasonably required for the construction, maintenance or operation of the Project, and such easements shall be insured by the Title Policy.

(s) Condominium Documents: To the extent prepared in draft or final form, Borrower shall have delivered to Lender a copy of all condominium plats, property reports, declarations, reciprocal and/or cross-easement agreements, agreements regarding cost sharing, filings, escrow agreements and other documents pertaining to the establishment of a condominium regime or condominium regimes at the Project or relating to the Project's compliance with all applicable local, state and federal Laws relating to condominiums (collectively, the "Condominium Documents").

(t) Additional Collateral: Prior to Loan Opening, Borrower shall have deposited with Lender (in addition to any unfunded portion of the Required Equity Investment) Six Million Dollars (\$6,000,000) of cash collateral (the "Additional Collateral", Four Million Four Hundred Twenty-Five Thousand Dollars (\$4,425,000) of which is the "First Additional Collateral" and One Million Five Hundred Seventy-Five Thousand Dollars (\$1,575,000) of which is the "Second Additional Collateral"). Borrower hereby grants to Lender a security interest in the Additional Collateral (including any account holding the Additional Collateral or any investment thereof) as additional security for the Loan. Upon Lender's written approval (such approval to be granted or withheld in Lender's reasonable discretion) of a guaranteed maximum or fixed price General Contract with the General Contractor for Phase II, then so long as no Event of Default exists, the Loan (including the Budget Line Items for Phase II) is otherwise In Balance and Borrower has otherwise met all conditions to the borrowing of Tranche B, Lender shall return to Borrower the excess, if any, of the amount of the First Additional Collateral over the amount of the Phase II Overrun (the First Additional Collateral shall also be applied as otherwise needed to render the Loan In Balance prior to any such return.). The First Additional Collateral (except any part Borrower is entitled to return of pursuant to the immediately preceding sentence) shall be deemed a Deficiency Deposit and shall be disbursed by Lender (upon Borrower's satisfaction of all conditions which would apply to disbursement of the Loan) to fund the next succeeding draw(s) prior to further disbursement of Loan proceeds. If the amount of the Phase II Overrun exceeds the amount of the First Additional Collateral, Borrower shall make a Deficiency Deposit in accordance with Section 11.2. Lender shall continue to hold the Second Additional Collateral until Borrower has complied with the following conditions for release thereof:

- (i) no Default or Event of Default exists;
- (ii) the entire Project has been completed and all required certificates of occupancy shall have been issued by the appropriate Governmental Authority; and
- (iii) Borrower shall have closed and conveyed Units (and paid the required Release Prices to Lender in connection therewith) (A) with gross purchase prices (exclusive of upgrades and extras) on an average square foot basis being not less than Six Hundred Dollars (\$600) per Saleable Square Foot and (B) with aggregate gross purchase prices (exclusive of upgrades and extras) of at least Seventy Million Dollars (\$70,000,000).

If Borrower does not satisfy such conditions, Lender shall continue to hold the Second Additional Collateral until the indebtedness under the Loan Documents has been repaid in full. So long as Borrower has rendered the Phase II Hard Costs Budget Line Item In Balance (based on the Phase II General Contract Price when determined) without use of the Second Additional Collateral and has otherwise qualified to borrow Tranche B, Borrower may request that Lender permit the Second Additional Collateral be used for increases in Hard Costs of Phase II occurring thereafter, and Lender shall grant or withhold such permission in its reasonable discretion. If Borrower's right to borrow Tranche B expires without Borrower qualifying to borrow Tranche B, Borrower shall not be entitled to return of any of the Additional Collateral and the Additional Collateral shall be applied to repay Tranche A (without payment of a prepayment penalty).

(u) Mezzanine Loan. Borrower shall have furnished to Lender copies of the Mezzanine Loan Documents, and the Mezzanine Loan shall have been fully funded and its terms shall have been approved by Lender, including, without limitation: (i) the Mezzanine Loan may not have a maturity date that is sooner than the Maturity Date of the Loan, and (ii) the Mezzanine Loan may not be secured by any of Lender's collateral for the Loan but may be secured by other collateral which is not security for the Loan, including, without limitation, a lien on the membership interests in Borrower.

(v) Intercreditor Agreement. Mezzanine Lender and Lender shall have entered into a subordination and intercreditor agreement prepared by counsel to Lender in form and substance acceptable to Lender in its sole discretion (the "Intercreditor Agreement"). The Intercreditor Agreement shall provide, without limitation, that (i) the Mezzanine Loan is fully subordinate in right of payment and priority of lien to the Loan; (ii) Mezzanine Lender shall not accept any payments of the Mezzanine Loan until Lender is indefeasibly paid in full, except as otherwise set forth in the Intercreditor Agreement; (iii) Mezzanine Lender shall not interfere in any manner with the enforcement of Lender's remedies; (iv) Mezzanine Lender shall not enforce any remedies with respect to its junior interests in the Project or any other collateral (whether or not such collateral is also pledged to Lender) prior to the Loan having been repaid in full, except that Mezzanine Lender may foreclose upon the equity interests in Borrower upon such terms and conditions as are set forth in the Intercreditor Agreement; and (v) Mezzanine Lender shall permit the sale of each Unit provided that the Release Price to Lender is at least ninety percent (90%) of the List Price. Borrower has received a copy of the Intercreditor Agreement. Borrower consents thereto and agrees to be bound thereby (but shall not be a third party beneficiary thereof or otherwise be deemed to have rights thereunder). Borrower also consents to Lender conducting negotiations and other discussions with Mezzanine Lender and exchanging information with Mezzanine Lender, in each case at any time prior to repayment in full of the Loan.

(w) Patriot Act: Borrower shall have provided Lender with proof that Borrower has complied in all respects with the provisions of the USA PATRIOT Act of 2001, as applicable, including without limitation, furnishing to Lender proof that Borrower has taken all action necessary to comply with Section 326 of such Act.

(x) Additional Documents. Borrower shall have furnished to Lender such other materials, documents, papers or requirements regarding the Project, Borrower or any Guarantor as Lender shall reasonably request.

Article 9
CONSTRUCTION REQUIREMENTS PRECEDENT
TO THE OPENING OF THE LOAN

9.1 Required Construction Documents for Loan Opening.

Borrower shall cause to be furnished to Lender and to Lender's Consultant the following, and Lender shall have approved the following, prior to the Opening of the Loan as additional conditions to Lender's obligations to make any disbursements of the Loan (except that Borrower is not required to have delivered the documents described in subparagraphs (a), (b), (c), (d), (e), (f), (g) and (j) for Phase II until Borrower wishes to qualify to borrow Tranche B as set forth in Section 9.2):

(a) Fully executed copies of the following, each reasonably satisfactory to Lender in all respects: (i) a general contract with the General Contractor pertaining to the construction of Phase I and pre-development costs for Phase II (referred to together with the General Contract for Phase II, individually or collectively as the context shall infer, as the "General Contract"), with a fixed or guaranteed price not to exceed Fifty-Four Million Four Hundred Ninety Thousand Dollars (\$54,490,000) (referred to together with the fixed or guaranteed maximum price for Phase II, individually or collectively as the context shall infer, as the "General Contract Price"); the aggregate amount of any allowances under each General Contract shall be no more than five percent (5%) of the total General Contract Price (excluding general conditions, General Contractor's fees and the Contractor's Contingency) and all allowances are subject to Lender's approval (for the purposes of this Agreement, an allowance shall have the meaning set forth in AIA A201-1997 "General Conditions of the Contract for Construction"); (ii) those Major Subcontracts which have been executed as of the date hereof; and (iii) all contracts with the architects, engineers, third-party owner's representative and other design professionals (the "Design Professionals"). Neither the General Contractor nor any Design Professionals may be an Affiliate of Borrower or of any Guarantor. The General Contractor may not be replaced without Lender's prior written consent. No Design Professional may be replaced without Lender's prior written consent, subject to its reasonable discretion;

(b) A schedule of values, including a trade payment breakdown, setting forth a description of all contracts let by Borrower and/or the General Contractor for the design, engineering, construction and equipping of the Improvements;

(c) An initial sworn statement of the General Contractor, approved by Borrower, and Lender covering all work done and to be done, together with lien waivers covering all work and materials for which payments have been made by Borrower prior to the Loan Opening;

(d) Borrower shall have ensured that the Major Subcontractors have each obtained a Performance Bond and a Conditional Labor and Material Payment Bond (collectively "Bonds") in the form of AIA document A312 and in an amount equal to 100% of the amounts of their respective Major Subcontracts guaranteeing all of the obligations of the Major Subcontractors. Lender shall be named a dual obligee on all Bonds. The Bonds must have been issued by bonding companies who are licensed in the state in which the Project is located and who are rated in the most current A.M. Best rating guide as A:IX or better. The Bonds must have been written within the limitations of the

most current U.S. Department of Treasury's listing of Approved Sureties (Department Circular #570). The General Contractor need not be bonded but must be bondable to a level acceptable to Lender. Notwithstanding the foregoing, the Phase I Major Subcontracts for steel and for concrete for the parking garage need not be bonded.

(e) Copies of each of the Required Permits, except for those Required Permits that cannot be issued until a later stage or completion of Construction, in which event such Required Permits will be obtained by Borrower on a timely basis in accordance with all recorded maps and conditions and applicable building, land use, zoning and environmental codes, statutes and regulations and will be delivered to Lender promptly thereafter. In any event, building permits for the foundation and vertical structure of Phase I (including the parking garage) will be required for Loan Opening.

(f) Full and complete detailed plans and specifications for the Improvements in duplicate, prepared by the Architect (the "Plans and Specifications"). Without limiting the foregoing, such Plans and Specifications must be predicated on, among other things, the characteristics in the Recitals of this Agreement and the floor layouts and elevations substantially similar to those which have been previously submitted to Lender. Lender must also be satisfied, in its sole discretion, that the floor plans, mechanical, electrical, plumbing, fire protection and life safety, structural and site plans are sufficient and appropriate for the Project. Upon Lender's written approval, the Plans and Specifications shall be the "Approved Plans and Specifications". Other than Change Orders permitted pursuant to the terms of this Agreement, no changes to the Approved Plans and Specifications shall be permitted without Lender's prior written approval. In addition to furnishing Lender with Plans and Specifications for the base building, Borrower has furnished to Lender and Lender's Consultant, for Lender's approval, detailed Plans and Specifications setting forth a detailed description and quality level for materials used for the type of construction, the façade and the finishes of each Unit and of all fixtures and personal property that will be included in the standard price of the individual Units, including, without limitation, items such as floor coverings, wall coverings, electrical systems, lighting plans, HVAC systems, bathroom and kitchen fixtures and countertops, cabinetry, appliances and furniture ("Proposed Finish Standards"). Lender must be satisfied, in its reasonable discretion, that the quality level of the Proposed Finish Standards is comparable to other condominium developments in the same price range and located in the Scottsdale, Arizona area. Upon Lender's written approval, the Proposed Finish Standards shall be the "Approved Finish Standards". No material changes to the Approved Finish Standards shall be permitted without the prior written approval by Lender, to be determined in Lender's reasonable discretion. Except as otherwise provided in the last grammatical paragraph of Section 14.4, Borrower shall finish all Units to the Approved Finish Standards as part of the Construction required hereunder.

(g) The Construction Schedule;

(h) The Soil Report;

(i) The Environmental Report, which shall, at a minimum, (i) demonstrate the absence of any existing or potential Hazardous Material contamination or violations of environmental Laws at the Project, except as acceptable to Lender in its sole and absolute discretion, (ii) include the results of all sampling or monitoring to confirm the extent of existing

or potential Hazardous Material contamination at the Project, including the results of leak detection tests for each underground storage tank located at the Project, if any, (iii) describe response actions appropriate to remedy any existing or potential Hazardous Material contamination, and report the estimated cost of any such appropriate response, (iv) confirm that any prior removal of Hazardous Material or underground storage tanks from the Project was completed in accordance with applicable Laws, and (v) confirm whether or not the Land is located in a wetlands district. Borrower shall also have caused to be furnished to Lender any environmental disclosure statement required pursuant to the law of the State;

(j) A report from Lender's Consultant that contains an analysis of the Approved Plans and Specifications, the Budget, the Construction Schedule, the General Contract, all subcontracts then existing and the Soil Report. Such report shall be solely for the benefit of Lender and shall contain (i) an analysis satisfactory to Lender demonstrating the adequacy of the Budget to complete the Project and (ii) a confirmation that the Construction Schedule is realistic. Lender's Consultant shall monitor construction of the Project and shall visit the Project at least one (1) time each month, and shall certify as to amounts of construction costs for all requested fundings; each report of Lender's Consultant is for the sole benefit of Lender and Lender shall not be bound by any recommendation or conclusion of Lender's Consultant;

(k) The Architect's Certificate;

(l) Original executed consents, in form and substance satisfactory to Lender, of the General Contractor, the Architect, and any other Design Professional to the Collateral Assignment of Construction Documents; and

(m) Such other papers, materials and documents as Lender may reasonably require with respect to the Construction, the Project, Borrower, or any Guarantor.

9.2 Requirements for Phase II.

Borrower shall cause to be furnished to Lender and Lender's Consultant the following, and Lender shall have approved the following, prior to any funding of Tranche B, as additional conditions to Lender's obligation to make any disbursement of Tranche B:

(a) The General Contract for the Construction of Phase II with a General Contract Price not to exceed Twenty-Six Million One Hundred Ninety-Five Thousand Dollars (\$26,195,000) (or such greater amount as is covered by the First Additional Collateral); the amount of any allowances under the General Contract for Phase II shall be no more than five percent (5%) of the construction trade work included in the General Contract Price, and the amount of all allowances shall be acceptable to Lender;

(b) An updated Budget for Phase II, which shall be In Balance (as determined by Lender in accordance with Article 11) after, to the extent necessary, application of the First Additional Collateral for such purpose;

(c) Plans and Specifications for Phase II in accordance with Section 9.1(f) above;

(d) Required Permits for Phase II, including a full building permit for Phase II;

(e) Bonds for Major Subcontracts for Phase II in accordance with the requirements of Section 9.1(d). (Any Major Subcontracts not to be bonded for Phase II must be as approved by Lender in its sole discretion.)

(f) Evidence satisfactory to Lender that Construction of Phase I is currently proceeding no later than thirty (30) days behind the dates shown in the Construction Schedule approved by Lender prior to Loan Opening;

(g) Builder's risk insurance shall have been increased so as to cover one hundred percent (100%) of Hard Costs and Owner's Hard Cost Contingency; and

(h) All other documents set forth in Section 9.1 with respect to Phase II to the extent not previously furnished and approved.

Article 10 BUDGET, CONTINGENCY FUND AND CHANGE ORDERS

10.1 Budget.

Disbursement of the Loan shall be governed by the Budget for the Project, in form and substance acceptable to Lender in Lender's sole discretion. Borrower shall only be entitled to disbursements that are in accordance with the Budget. The Budget shall specify the amount of cash equity invested in the Project, and all costs and expenses of every kind and nature whatsoever to be incurred by Borrower in connection with the Project. Costs associated with Unit sales (including but not limited to broker's commissions, closing and escrow costs) may be paid from proceeds resulting from any Unit closing to the extent the gross sales price paid by any Unit Purchaser for its respective Unit exceeds the applicable Release Price; otherwise, such closing costs shall be paid in cash by Borrower. The Budget shall include, in addition to the Budget Line Items described in Section 10.2 below, the Contingency Fund described in Section 10.3 below, and amounts satisfactory to Lender for Hard Costs, Soft Costs and other reserves acceptable to Lender. The initial Budget is attached hereto as Exhibit G and made a part hereof. All changes to the Budget shall in all respects be subject to the prior written approval of Lender, which approval shall be granted or withheld in Lender's sole discretion. Borrower shall promptly notify Lender of any anticipated changes in the line items of the Budget that, if approved, would result in a net increase in the total amount of the Budget. In the event the total Project costs are less than the final Budget, Borrower shall have no right to borrow the balance of the Loan not needed for Project costs.

10.2 Budget Line Items.

(a) The Budget shall include as line items ("Budget Line Items"), to the extent determined to be applicable by Lender in its reasonable discretion, the cost of all labor, materials, equipment, fixtures and furnishings needed for the completion of the Construction, and all other costs, fees and expenses relating in any way whatsoever to the Construction of the Improvements, marketing and sales costs, commissions, operating deficits, real estate taxes, and all other sums due in connection with Construction and operation of the Project, the Loan, and this Agreement. Each line item in the trade breakdown of the General Contract shall be

considered a separate Budget Line Item for all purposes of this Agreement whether or not separately shown as Budget Line Items on the Budget attached hereto. Borrower agrees that all Loan proceeds disbursed by Lender shall be used only for the Budget Line Items for which such proceeds were disbursed, except as reallocated in accordance with this Agreement or otherwise permitted by Lender in its reasonable discretion. The Budget shall not contain any line items payable to Borrower, any Guarantor or any Affiliate of either Borrower or any Guarantor and Borrower and Guarantors shall not pay or cause to be paid any Loan proceeds to any Affiliate of either, except for the Permitted Affiliate Expenses.

(b) Borrower shall have the right to reallocate cost savings effected by a final Change Order or other appropriate final documentation to other Budget Line Items subject to (x) Lender's prior written consent, in its reasonable discretion, and (y) the limits contained in this Section 10.2 and Section 10.3 of this Agreement. No reallocations shall be permitted to or from the Interest Reserve Budget Line Item, Developer Fee Budget Line Item or for any amounts payable to Borrower, Guarantors or any Affiliates of Borrower or any Guarantor; provided, however, that Borrower may reallocate up to Forty-Five Thousand Dollars (\$45,000) of the undisbursed Developer's Fee Budget Line Item for Tranche A and, if Borrower has qualified to borrow Tranche B, up to Seven Hundred Fifty-Five Thousand Dollars (\$755,000) of the undisbursed Developer's Fee Budget Line Item for Tranche B, to pay for bona fide third-party costs of the Project, in each case subject to the approval of Lender in its reasonable discretion. Any reallocated amounts shall be deemed reallocations of the Developer's Fee to be next disbursed. If there is a savings in Hard Costs upon completion of the Project, as determined by the Lender in its reasonable discretion, the Commitment shall be reduced by the amount of the savings except to the extent a portion of such savings are paid to the General Contractor pursuant to the terms of the General Contract. Notwithstanding the foregoing and subject to the Bank's reasonable discretion, Borrower may reallocate such Hard Cost savings to the Owner's Hard Cost Contingency for use for other Hard Costs outside of the General Contract or to Soft Cost Contingency. If Construction is complete and in Lender's judgment any remaining Owner's Hard Cost Contingency is no longer needed, Borrower may reallocate said amount to Soft Cost Contingency. If the total and final expenditures for any Soft Cost Budget Line Item are less than the amount provided for in the Budget, then the Loan shall be reduced by the difference or, as determined by Lender in its reasonable discretion, then such cost savings may be reallocated to the Soft Cost Contingency. In the event that the final costs of the Project are less than the total amount of sources of funds in the Budget (including the Loan), the amount of the cost savings shall not be available for borrowing (e.g., as a return of equity).

(c) Except as reallocated in accordance with this Agreement or otherwise permitted by Lender in its reasonable discretion, Lender shall not be obligated to disburse any amount for any category of costs set forth as a Budget Line Item that is greater than the amount set forth for such category in the applicable Budget Line Item. Borrower shall pay as they become due all amounts set forth in the Budget with respect to costs to be paid for by Borrower.

10.3 Contingency Fund.

The Budget shall contain Budget Line Items available to Borrower for (i) payment of Hard Costs (the "Owner's Hard Cost Contingency") and (ii) for payment of Soft Costs (the "Soft Cost Contingency"; together, the Owner's Hard Cost Contingency and the Soft Cost

Contingency constitute the "Contingency Fund"). The funds in the Owner's Hard Cost Contingency Budget Line Item for each of Tranche A and Tranche B must be equal to or greater than four percent (4%) of the Hard Costs in such tranche and the funds in the Soft Cost Contingency Budget Line Item for each of Tranche A and Tranche B must be equal to or greater than two percent (2%) of the Soft Costs in such tranche. At the time the General Contract Price is set for Phase II, the Hard Cost Contingency for Phase II shall be readjusted so as to equal four percent (4%) of such Phase II General Contract Price (and Borrower shall make a Deficiency Deposit to make up for any insufficiency).

Lender shall not be obligated to disburse or reallocate all or any part of the Contingency Fund, except as set forth herein. The Owner's Hard Cost Contingency may be used by Borrower to pay the cost of Change Orders or reallocated to other Hard Costs on a pro rata basis over the course of Construction based on the percentage of construction trade items (which shall equal the amount of the General Contract price less general conditions, the General Contractor's fee and any Contractor's Contingency) completed to date. Savings in Hard Cost Budget Line Items which accrue prior to completion of the Project may be allocated to the Owner's Hard Cost Contingency. Funds from the Soft Cost Contingency may be reallocated to pay other Soft Costs or reallocated to Owner's Hard Cost Contingency, in each case as approved in writing by Lender in its reasonable discretion, provided that Borrower may reallocate up to \$100,000 (in the aggregate) of Soft Cost Contingency to pay bona fide third-party Soft Costs without Lender's consent. The Contingency Fund shall not be available to pay any portion of the General Contract Price for Phase II in excess of Twenty-Six Million One Hundred Ninety-Five Thousand Dollars (\$26,195,000) (which is the net budgeted amount available for such purpose).

The Budget Line Item for amounts payable to the General Contractor under the General Contract may also include a contingency amount that is available to the General Contractor (the "Contractor's Contingency"). This is in addition to the Contingency Fund, which is intended to afford protection to Lender, and any Contractor's Contingency may not be counted towards the amounts required to be contained in the Contingency Fund by the preceding paragraphs of this Section 10.3. The Contractor's Contingency shall be used in accordance with the terms of the General Contract.

10.4 Optional Method for Payment of Interest.

For Borrower's benefit, the Budget includes Budget Line Items for interest on Tranche A and Tranche B (individually or collectively, as the context may infer, the "Interest Reserve Budget Line Item"). Borrower hereby authorizes Lender from time to time, for the mutual convenience of Lender and Borrower, to disburse Loan proceeds to pay all the then accrued interest on the Note, regardless of whether Borrower shall have specifically requested a disbursement of such amount. Any such disbursement, if made, shall be added to the outstanding principal balance of the Note and shall, when disbursed, bear interest pursuant to the Note. Borrower may borrow the Interest Reserve Budget Line Item to pay interest on the Loan, upon qualifying for such disbursement by satisfying the applicable requirements of Section 4.1(c) hereof, provided that the Interest Reserve Budget Line Item for Tranche B may not be borrowed until Borrower has qualified to borrow (and has borrowed a portion of) Tranche B. Without limiting the foregoing, or the provisions of Article 11 below, once the Interest Reserve Budget Line Item has been expended (or, if Borrower has not qualified to borrow Tranche B, the

Interest Reserve Budget Line Item for Tranche A has been expended), Borrower shall pay interest from its own funds. In the event the Project, during any month during the term of the Loan, achieves a positive Net Operating Income, such Net Operating Income shall be applied to the payment of interest before the funds in the Interest Reserve Budget Line Item are used to pay such interest. If the Net Operating Income exceeds the monthly interest then due, the excess shall be applied to the principal balance of the Loan.

10.5 Changes Orders.

Borrower agrees that no changes will be made in the Approved Plans and Specifications without the prior written approval of Lender, provided, however, that Borrower may make changes to the Approved Plans and Specifications if (a) Borrower notifies Lender in writing of such change within seven (7) days thereafter and in no event later than the next construction draw following Borrower's agreement to the changes; (b) Borrower obtains the approval of all parties whose approval is legally required, including any affected Unit Purchaser, sureties, and any Governmental Authority to the extent approval from such parties is required; (c) the structural integrity of the Improvements is not impaired; (d) no material change in architectural appearance is effected; (e) the performance of the mechanical, electrical, and life safety systems of the Improvements is not affected; (f) the quality, functionality or marketability of the Project is not adversely affected; (g) the cost of, or reduction in cost, resulting from any such change does not exceed \$100,000; and (h) the Loan will remain In Balance (after giving effect to any reallocation of the Contingency Fund or other Budget Line Items that Borrower has qualified for pursuant to this Article 10). Changes in the scope of construction work or to any construction related contract must be documented with a Change Order on the AIA Form G 701 or equivalent form.

Article 11 SUFFICIENCY OF LOAN

11.1 Loan In Balance.

(a) The Loan is required to be In Balance at all times. The Loan shall be "In Balance" only when both (i) the Available Sources of Funds equal or exceed Lender's Estimate of Remaining Costs and (ii) each Budget Line Item is sufficient to pay the costs such Budget Line Item was established to pay for (including, with respect to the Interest Reserve Budget Line Item interest in the Loan through the Maturity Date), all as determined by Lender from time to time in its reasonable discretion in accordance with the provisions of this Article 11. The determination by Lender at any time that the Loan is In Balance shall not preclude Lender from determining at a later time that the Loan is not In Balance. Lender shall not be obligated to make any disbursements unless the Loan is In Balance.

(b) Borrower agrees that if Lender determines in its reasonable discretion that the Loan is not In Balance, regardless of how such condition may have been caused, Borrower shall within ten (10) days after written request by Lender (and in any event prior to any further disbursement of the Loan) deposit the deficiency with Lender ("Deficiency Deposit"). The Deficiency Deposit shall be first exhausted for costs of the Project before any further disbursements of the Loan shall be made. Disbursement of a Deficiency Deposit shall be subject

to the same conditions precedent and the same requirements as apply to a disbursement of the Loan pursuant to this Agreement. Any Deficiency Deposit deposited with Lender shall be added to and made a part of the Required Equity Investment of Borrower in the Project, and no interest shall be paid to Borrower with respect to any such amounts. Borrower pledges to Lender any Deficiency Deposit (and Borrower's rights in any such account and interest earned thereon) as security for the Loan.

(c) (i) The "Available Sources of Funds" shall mean the Unfunded Commitment, adjusted as provided below, less the remaining balance of the Contingency Fund. Borrower may seek to increase the Available Sources of Funds (or the amount of any Budget Line Item) by requesting that Lender reallocate a portion of the Contingency Fund to pay for cost increases in Budget Line Items, and Lender shall grant or deny such request in accordance with the provisions of Section 10.3. Lender may, so long as it is entitled to do so under Section 10.3, deny a request for reallocation of a portion of the Contingency Fund, even if as a result thereof Borrower would be required to make a Deficiency Deposit to maintain the Loan In Balance.

(ii) The following specific adjustments shall be made to the Available Sources of Funds for this transaction: (A) Upgrade Deposits may be counted as an Available Source of Funds but only up to the amount of costs of upgrades included in Lender's Estimate of Remaining Costs, (B) the First Additional Collateral remaining on deposit shall be available to offset any shortfall in Hard Costs for Phase II and (C) tax escrow deposits may be counted as an Available Source of Funds to the extent real estate taxes are included in Lender's Estimate of Remaining Costs.

(d) "Lender's Estimate of Remaining Costs" shall mean the amount which Lender estimates in its reasonable discretion is necessary to pay for all Hard Costs and Soft Costs of the Project which have not yet been paid, including, without limitation, the following: (i) all costs of the Construction in accordance with the Approved Plans and Specifications; (ii) all costs required to complete the preparation of the Units in accordance with the Approved Finish Standards, including, without limitation, all finishes of Units required to be paid for by Borrower under Sales Agreements or reasonably anticipated for unsold Units; (iii) marketing and sales costs; (iv) the amount required to pay interest on the Loan through the Maturity Date; (v) all expenses payable or reimbursable to Lender under the terms of this Agreement; (vi) all real estate taxes, insurance premiums and operating costs of the Project (in excess of any Net Operating Income which Lender estimates will be available for payment of such costs); (vii) all amounts needed for tenant allowances, tenant improvements and leasing commissions with respect to executed Leases and with respect to unleased space at the Project; and (viii) all other amounts of any type or nature incurred or expected to be incurred in connection with the acquisition, Construction, marketing and sale of the Project or in order for Borrower to comply with the Loan Documents or the requirements of Governmental Authorities.

(e) In determining Lender's Estimate of Remaining Costs (or the amount of any Budget Line Item), Lender shall be entitled to take into account all conditions, facts and circumstances related to the Project or the Loan then existing, and all other considerations which Lender, in its reasonable discretion, determines are relevant to, or reasonably likely to have an impact upon, any of the amounts included in Lender's Estimate of Remaining Costs. By way of example and not limitation, Lender shall have the right, in making Lender's Estimate of

Remaining Costs (or determining the sufficiency of any Budget Line Item), to consider in such manner and to such extent as Lender determines is appropriate in its reasonable discretion: (i) all existing and proposed modifications to the Approved Plans (whether or not Lender has the right to approve the same), whether the same are proposed by Borrower or by a contractor, (ii) all existing construction contracts and purchase orders or, in those instances where construction contracts or purchase orders have not yet been let, written bids from responsible contractors, tradesmen and material suppliers acceptable to Lender in its reasonable discretion, or Lender's estimate of such costs, (iii) all Change Orders and pending Change Orders, (iv) all claims by any contractors or suppliers for increased or additional amounts, including all claims by the General Contractor for increases in the amount payable under General Contract, (v) all disputes between Borrower and any supplier or contractor (including the General Contractor), (vi) whether any savings in a Budget Line Item have been demonstrated to Lender's satisfaction to be final and permanent and whether any proposed reallocation of such savings to pay other costs satisfies the limitations and restrictions in Section 10.2(b) of this Agreement (and any applicable restrictions or limitations in the General Contract), and (vii) the effect of actual or anticipated delays, whether or not permitted by the terms of this Agreement.

(f) Notwithstanding the foregoing provisions of this Article 11, Lender has agreed to execute this Agreement even though the General Contract Price for Phase I exceeds the Budget Line Item for construction of Phase I by Two Million Dollars (\$2,000,000). Such failure of the Loan to be In Balance may continue for sixty (60) days from the date of this Agreement, but not thereafter, provided that in no event shall Borrower be entitled to borrow any proceeds of the Loan until the Loan is In Balance. Borrower may within such sixty (60) day period deliver to Lender Change Orders which reduce the General Contract Price for Phase I, but all such Change Orders must be approved by Lender in its reasonable discretion (whether or not such Change Orders would otherwise require Lender's approval under Section 10.5). No such Change Order may adversely affect the scope or quality of the Project. Borrower shall not have the right to satisfy such shortfall by reallocating other Budget Line Items (such as Owner's Hard Cost Contingency) to pay for such shortfall, it being agreed that otherwise the parties believe the items in the Budget are needed for their budgeted purposes. To the extent the General Contract Price for Phase I is not so reduced within sixty (60) days after the date hereof (or is reduced by less than Two Million Dollars (\$2,000,000)), Borrower shall make a Deficiency Deposit with Lender in the amount of the remaining shortfall upon or prior to the end of such sixty (60) day period (and in any event, prior to Loan Opening).

Article 12 CONSTRUCTION PAYOUT REQUIREMENTS

12.1 Applicability of Sections.

The provisions contained in this Article 12 shall apply to the Opening of the Loan and to all disbursements of proceeds during Construction.

12.2 Monthly Payouts.

After the Opening of the Loan, further disbursements shall be made during Construction from time to time as the Construction progresses, but no more frequently than once in each

calendar month, except to pay interest from the Interest Reserve Budget Line Item in accordance with Section 10.4 or as Lender may otherwise permit in its sole but reasonable discretion. Hard Costs, including the General Contractor's fee, shall be disbursed on a pro rata basis according to the percentage of trade construction completed (excluding general conditions, contractor's fees and contingencies), less Retainage. All disbursements of Loan proceeds must be approved by the Lender in its sole discretion based on costs expended as contained in the Budget. No Loan disbursements shall be made until Borrower has funded the Required Equity Investment and the Mezzanine Loan (excepting any interest reserve) has been fully funded. The Lender shall have no obligation to disburse funds if a Default exists under the Loan or any condition exists which with the giving of notice or passage of time would constitute an Event of Default.

At Lender's option, disbursements may be made by Lender into an escrow and subsequently disbursed to Borrower by the Title Insurer, or to an account with Lender, in Borrower's name or in the name of a designated intermediary acceptable to Lender, pursuant to which funds will be disbursed directly to the applicable payees. If such option is exercised, those Loan proceeds shall be deemed to be disbursed to Borrower from the date of disbursement by Lender and interest shall accrue on those proceeds from that date. Lender is not initially requiring that disbursements be made into the escrow described in this Section 12.2; provided, however, Lender reserves the right to require such an escrow at any time. At such time as disbursements are not being funded through an escrow, Lender may choose to fund Hard Costs directly to the General Contractor or other contractors or material suppliers.

The Lender, through Lender's Consultant and/or its own employees, may perform site inspections to confirm that progress on the Project conforms to the sworn statements, and that the Project is progressing within the Budget and the Approved Plans. Such inspections and confirmations are solely for the benefit of the Lender and may not be relied upon by Borrower. Upon such confirmation, and upon receipt of a title company's commitment to issue a date down endorsement insuring the funds about to be disbursed, the Lender shall wire transfer money to the Borrower, unless a construction escrow has been established with a title insurance company, who will then disburse pursuant to the escrow agreement. Provided the Lender receives complete and orderly draw requests, together with the appropriate lien waivers, it shall make every commercially reasonable effort to fund such requests within ten (10) Business Days. No disbursements for costs arising under the General Contract shall be made later than one hundred (120) days after substantial completion of the Construction.

12.3 Documents to be Furnished for Each Disbursement.

As a condition precedent to each disbursement of the Loan proceeds (including the initial disbursement at the Opening of the Loan), Borrower shall furnish or cause to be furnished to Lender the following documents covering each disbursement, in form and substance reasonably satisfactory to Lender:

(a) A completed draw request in the form attached as Exhibit H hereto and made a part hereof, including a Borrower's Sworn Statement executed by an Authorized Representative and a completed standard AIA Form G702 and Form G703 (or similar forms acceptable to Lender) signed by the General Contractor and certified by the Architect, together with General Contractor's sworn statements and unconditional waivers of lien, and all Design Professionals',

consultants', vendors', contractors', subcontractors', material suppliers' and laborers' conditional waivers of lien substantiating each line item of the draw request and covering all work, paid with the proceeds of the prior draw requests, together with such invoices, contracts or other supporting data as Lender may require to evidence that all costs for which disbursement is sought have been incurred;

(b) A sworn owner's statement detailing the names and addresses of all suppliers, vendors, consultants and contractors with whom Borrower has contracted, amounts of contracts, amounts paid to date, and amounts of current payment and balances due, broken down in a consistent manner with the Budget;

(c) A Contractor's statement detailing the names and addresses of all suppliers, contractors and its own forces contracted to perform work including amounts of contracts, amounts paid to date, change orders, amounts of current payment, Retainage, and balances due;

(d) The Contractor's application and certification for payment executed by the Borrower's lead Design Professional;

(e) Paid invoices or other evidence satisfactory to Lender that fixtures and equipment, if any, have been paid for and are free of any lien or security interest therein;

(f) A date down endorsement to the Title Policy issued to Lender covering the date of disbursement and showing the Mortgage as a first, prior and paramount lien on the Project subject only to the Permitted Exceptions and real estate taxes that have accrued but are not yet due and payable and particularly that nothing has intervened to affect the validity or priority of the Mortgage. If the Title Policy is subject to a pending disbursement endorsement, the amount of such endorsement must be increased to the full amount funded;

(g) A report from Lender's Consultant (who shall be retained solely at the Borrower's expense) that contains an analysis satisfactory to Lender demonstrating the adequacy of the Budget to complete the Project, a confirmation that Construction is proceeding in accordance with the Construction Schedule and the Approved Plans and Specifications, and a certification as to amounts of Construction costs for the applicable requested funding, provided, however, that the opinion of the Lender's Consultant shall not be binding on Lender;

(h) Copies of any proposed or executed Change Orders on the standard AIA G701 form that have not been previously furnished to Lender;

(i) Copies of all construction contracts (including subcontracts) that have been executed since the last disbursement;

(j) Verification of expenditures for Soft Costs;

(k) All Required Permits not previously delivered to Lender; and

(l) Such other instruments, documents and information as Lender or the Title Insurer may reasonably request.

12.4 Retainages.

At the time of each disbursement of Loan proceeds, ten percent (10%) of the draw request for Hard Cost Line Items in the Budget (including the Contractor's fee line items but not including the General Contractor's general conditions, direct purchase orders for materials and equipment, insurance and bond costs) of each amount due the General Contractor and the various contractors, Subcontractors and material suppliers for costs of the Construction shall be withheld from the amount disbursed (the "Retainage"). The amount of Retainage to be withheld may be reduced to five (5%) percent of any trade line item once the Lender determines, in its sole discretion, that any given trade line item is fifty percent (50%) complete. Additionally, Lender will, if requested, release Retainage to any subcontractor who has delivered a final lien waiver and whose work has been completed to the satisfaction of Lender and Lender's Consultant. The balance of the Retainage will be disbursed only at the time of the final disbursement of Loan proceeds under Article 13 below.

12.5 Disbursements for Materials Stored On-Site.

Any requests for disbursements that in whole or in part relate to materials, equipment or furnishings that Borrower owns and that are not incorporated into the Improvements as of the date of the request for disbursement, but are to be temporarily stored at the Project, shall be made in an aggregate amount not to exceed Two Million Dollars (\$2,000,000). Any such request must be accompanied by evidence satisfactory to Lender that (a) such stored materials are included within the coverages of insurance policies carried by Borrower, (b) the ownership of such materials is vested in Borrower free of any liens and claims of third parties, and Lender has a purported security interest in such stored materials; (c) such materials are properly protected against theft or damage, (d) the Lender's Consultant has viewed and inspected the stored materials, and (e) in the opinion of the Lender's Consultant the stored materials are physically secured and can be incorporated into the Project within forty-five (45) days.

12.6 Disbursements for Offsite Materials.

Lender may in its reasonable discretion, but shall not be obligated to, make disbursements for materials stored off-site, in which event all of the requirements of Section 12.5 shall be applicable to such disbursement and the following additional requirements must have been complied with: (a) such stored materials are stored in a bonded public warehouse or another facility acceptable to Lender in its sole discretion; (b) Borrower has caused any warehouseman (as defined in Section 7-102 of the Uniform Commercial Code) that possesses, holds or controls the stored materials to execute (i) a bailment letter in the form of Exhibit K and (ii) a non-negotiable warehouse receipt covering such stored materials in form sufficient to enable Lender to have perfected security interest therein and (c) Borrower has caused any party other than a warehouseman that possesses, holds or controls the stored materials to execute and deliver to Lender a bailment letter in the form of Exhibit L. The maximum amount of disbursements for materials stored offsite shall be \$2,000,000.

12.7 Specific Limitation on Disbursements.

No amounts in the Budget shall be disbursed to Borrower, Guarantors, any direct or indirect beneficial owner of an interest in Borrower, any Guarantors or any Affiliate of any of the foregoing, except for the following (the "Permitted Affiliate Expenses"):

(a) The Developer's Fee Budget Line Item in an amount not to exceed Four Million Dollars (\$4,000,000), Two Hundred Twenty-Five Thousand Dollars (\$225,000) of which is part of Tranche A and Three Million Seven Hundred Seventy-Five Thousand Dollars (\$3,775,000) of which is part of Tranche B; commencing after Loan Opening, Borrower may borrow Seventy-Five Thousand Dollars (\$75,000) per month from the Tranche A Developer's Fee Budget Line Item until fully disbursed; once Borrower qualifies to borrow Tranche B and commences to construct Phase II, Borrower may borrow One Hundred Fifty Thousand Dollars (\$150,000) per month for each month thereafter from the Tranche B Developer's Fee Budget Line Item; additionally, together with the first disbursement from Tranche B, Borrower may on a one-time basis borrow catch-up payments from the Tranche B Developer's Fee Budget Line Item in the amount of Seventy Five Thousand Dollars (\$75,000) for each month from Loan Opening through the month prior to the initial disbursement of Tranche B;

(b) Payment to Affiliates of Vanguard City Home, LLC for brokerage services rendered at no less favorable than market rates;

(c) Profit distributions to the carry over Land investors from the sale of the Land to Borrower (so long as the remaining equity in Borrower equals or exceeds the Required Equity Investment and the Additional Collateral has been deposited with Lender);

All disbursements of Permitted Affiliate Expenses are subject to the same conditions precedent as apply to disbursements generally under this Agreement.

Article 13 FINAL DISBURSEMENT FOR CONSTRUCTION

13.1 Final Disbursement for Construction.

Lender will advance to Borrower the final disbursement for the cost of the Construction (including retainages not yet disbursed) when the following conditions have been complied with, provided that all other conditions in this Agreement for disbursements have been complied with:

(a) The Improvements have been fully completed and equipped in accordance with the Approved Plans and Specifications free and clear of materialmen's liens and security interests and are ready for occupancy;

(b) Borrower shall have furnished to Lender "all risks" casualty insurance and windstorm and flood insurance each in form and amount and with companies reasonably satisfactory to Lender in accordance with the requirements contained herein;

(c) Borrower shall have furnished to Lender copies of all licenses and permits required by any Governmental Authority having jurisdiction for the occupancy of the Improvements and the operation thereof, including a final certificate of occupancy from the municipality in which the Project is located or a temporary certificate of occupancy, so long as Units may still be sold;

(d) Intentionally deleted.

(e) All fixtures, furnishings, furniture, equipment and other property required for the operation of the Project shall have been installed free and clear of all liens and security interests, except in favor of Lender;

(f) Borrower shall have furnished to Lender copies of all final waivers of lien and sworn statements from contractors, subcontractors and material suppliers and an affidavit from the General Contractor in accordance with the mechanic's lien law of the State or as otherwise established by Lender;

(g) Borrower shall have furnished to Lender a certificate from the Architect or other evidence satisfactory to Lender in Lender's sole discretion dated at or about the Completion Date stating that (i) the Improvements have been completed substantially in accordance with the Approved Plans and Specifications, and (ii) the Improvements as so completed comply with all applicable Laws; and

(h) Lender shall have received a certificate from the Lender's Consultant for the sole benefit of Lender that the Improvements have been satisfactorily completed substantially in accordance with the Approved Plans and Specifications (and if Lender's Consultant determines Borrower has qualified therefor, Lender shall cause Lender's Consultant to promptly issue such certificate).

Borrower shall comply with and satisfy each of the foregoing final disbursement conditions contained in this Section 13.1 within ninety (90) days after the Completion Date.

Article 14 SALE OF UNITS

14.1 Price List Schedule.

Borrower has submitted to Lender for its written approval a Price List Schedule (the "Price List Schedule") stating, at a minimum, a detailed breakdown of each condominium Unit's size, type, location and gross sales price ("List Price") for each Unit (including, but not limited to, a weighted average gross sales price of not less than \$600 per Salable Square Foot for each Unit). The approved Price List Schedule is attached to this Agreement as Exhibit M. The List Price for each Unit may not be changed without Lender's prior written approval, which may be granted or withheld in Lender's sole discretion (provided that Lender shall not unreasonably withhold its consent to changes in the Price List Schedule which still result in the weighted average gross sales prices of the Units equaling or exceeding Six Hundred Dollars (\$600) per

Saleable Square Foot). The List Price for each Unit includes one Parking Space (by deed or easement).

14.2 Sales Agreements.

Each Unit shall be sold under a written agreement in the form of the existing sale agreements included in the condominium prospectus or on a form otherwise approved by Lender, in its sole discretion (the "Sales Agreement") in all material respects conforming to all Laws, including those requiring disclosures to prospective and actual buyers. Prior to entry into any Sales Agreement, Borrower shall have delivered to Lender, and Lender shall have approved, the form of the Sales Agreement to be used for such sales. No Unit may be leased, sold or conveyed under any lease, conditional sales contract or other arrangement where Borrower retains a deferred portion of the purchase price or any residual or contingent interest in the Unit, including any purchase money security interest, without the express prior written consent of Lender in each instance. Borrower shall deliver to Lender a copy of each Sales Agreement within thirty-one (31) days of its execution.

14.3 Purchaser Deposits.

(a) When deposits are made by the Unit Purchasers from time to time, Borrower shall deposit with a title insurance company (not a title agent) reasonably acceptable to Lender as escrow agent (or any successor agent approved by Lender in writing in its sole discretion) (the "Escrow Agent"), in accordance with an escrow agreement reasonably satisfactory to Lender (the "Escrow Agreement") and shall cause the Escrow Agent to maintain in one or more accounts with Lender (unless Lender otherwise agrees) titled in the name and subject to the control of Escrow Agent, the earnest money paid by Unit Purchasers under the Sales Agreements (the "Earnest Money Deposits"). The Escrow Agent may not be changed without the prior written consent of Lender. Borrower shall, upon execution of the Escrow Agreement, execute and cause Escrow Agent to execute and deliver to Lender a control letter in the form of Exhibit I.

(b) Borrower shall require all Unit Purchasers to make cash Earnest Money Deposits of at least ten percent (10%) of the gross sales price. Borrower shall cause Escrow Agent to deliver to Lender within seven (7) days of the end of each calendar month a statement indicating the amount of funds on deposit representing Earnest Money Deposits, together with information on the date of deposit, and to which Unit all such deposits apply. Borrower shall not accept any non-cash Earnest Money Deposits or Upgrade Deposits. Borrower shall not be permitted to use or apply the Earnest Money Deposits prior to the closing of the sale of a Unit, whereupon the Earnest Money Deposit shall be considered part of the Net Sales Proceeds and applied as set forth in Section 14.9 (subject to Section 14.3(f)).

(c) All amounts paid by Unit Purchasers for Unit upgrades ("Upgrade Deposits") shall be deposited with the Escrow Agent and maintained in a non-interest bearing account with Lender (unless Lender otherwise agrees) prior to the commencement of any work relating to such Unit upgrades. Borrower shall require Unit Purchasers to make Upgrade Deposits equal to not less than one hundred percent (100%) of the amount of the cost to Borrower of such Unit upgrades. All upgrade or Unit customization costs shall be subject to Lender's approval if the upgrade or customization item is unusual or such costs for any Unit aggregate in excess of Fifty

Thousand Dollars (\$50,000.00). Loan proceeds shall not be available for payment of costs incurred in connection with Unit upgrades or customization items, the sole responsibility for such costs being with Borrower. To the extent that the amount of Upgrade Deposit on deposit with Escrow Agent is not sufficient to pay in full the cost of any such upgrades when due, Borrower shall promptly deposit with the Escrow Agent an additional Required Equity Investment equal to the cost of the upgrade. Such deposit will be required at the time of the execution of the Sales Agreement containing the upgrade. Lender shall also be entitled to inspect any Unit upgrade work, and shall be entitled to review and approve reasonable supporting documentation with respect to such Unit upgrade work, in a manner commensurate with other Hard Cost disbursements before approving payment therefor.

(d) The Deposits shall be segregated from other funds and shall be held, applied or returned, as applicable, in accordance with the terms of the respective Sales Agreement and applicable Laws. To the extent Borrower becomes entitled to retain any Deposits that have not been previously applied in accordance herewith (i.e. upon the forfeiture of any deposit by a Unit Purchaser), such amounts shall be paid to Lender and applied to the Loan. To the extent that a Unit Purchaser becomes entitled to return of its Deposits under its Sales Agreement or under applicable Laws, so long as no Event of Default exists and the Upgrade Deposit has not already been spent by Borrower, Borrower shall be entitled to notify the Escrow Agent and withdraw from the escrow account such Deposit for return to the Unit Purchaser, with a copy of such notice to be simultaneously sent to Lender. Notwithstanding the foregoing, Lender hereby acknowledges and agrees that Borrower's rights to the Deposits are subject to the rights of the Unit Purchasers to such Deposits as set forth in the Sales Agreements, the Escrow Agreement and under applicable law, and that the Escrow Agent may be obligated to return the Deposits to such Unit Purchasers when and as so required even if an Event of Default exists.

(e) Borrower hereby grants to Lender a security interest in all of Borrower's right, title and interest in and to the Deposits and all accounts holding any such deposits from time to time. Upon request by Lender, Borrower shall promptly provide to Lender such documentation as Lender determines is necessary to confirm and perfect such security interest. Such security interest is subject to the rights of Unit Purchasers in and to such Deposits in accordance with the terms of their respective Sales Agreements and applicable Laws.

(f) Borrower may, in accordance with (x) all applicable Laws governing the use of Earnest Money Deposits and (y) the provisions of each applicable Sales Agreement, use Earnest Money Deposits to pay for Hard Costs included in the Budget. Earnest Money Deposits for Phase II may not be so expended until Borrower has qualified to borrow Tranche B and has commenced construction of Phase II. All disbursements of Earnest Money Deposits shall be subject to the requirements for disbursements of Loan Proceeds under this Agreement (i.e., Borrower shall submit a draw package complying with Article 12, and Earnest Money Deposits up to the amount of Hard Costs then to be paid shall be used to fund all or a portion of such draw). Each such funding of Earnest Money Deposits shall be subject to Lender's written approval to verify that all conditions to disbursement have been satisfied. Other than as expressly permitted in this paragraph, all Earnest Money Deposits must remain in escrow until the release of the related Unit in accordance with this Agreement. Any such expenditure of Earnest Money Deposits shall reduce the Commitment (and the applicable Budget Line Items for Hard Costs) on a dollar-for-dollar basis, with any such reduction to be applied against Tranche A

until and unless Borrower has qualified to borrow Tranche B and has commenced Construction of Phase II. (Once the Hard Cost Budget Line Items have been fully funded, no further Earnest Money Deposits may be so applied.) Notwithstanding the foregoing, Borrower shall not have the right to so apply Earnest Money Deposits unless Lender is satisfied that (i) such use is permitted under the Laws of the State of Arizona and under the Interstate Land Sales Act, (ii) such use has been clearly disclosed in all public reports and offering documents, (iii) such use is clearly and expressly authorized by each applicable Sales Agreement and the Sales Agreement provides that the Unit Purchaser's rights under the Sales Agreement are subordinate to the Deed of Trust and the Unit Purchaser has no lien rights in the Project (or its Unit). To the extent the Earnest Money Deposit for any Unit is so applied to pay Hard Costs in the Budget and the Commitment is thereby reduced, the Release Price for the applicable Unit shall be reduced by the amount so applied. The Earnest Money Deposits shall not be deemed to be an Available Source of Funds in determining whether the Loan is In Balance.

14.4 Unit Sales.

Borrower may enter into Sales Agreements and sell Units without Lender's prior written consent only if:

(a) A Sales Agreement is executed with the Unit Purchaser, the form of which does not materially differ from the form of sales contract submitted to and approved by Lender in writing and that otherwise conforms to the requirements of this Agreement, and the Borrower has not entered into any side agreements relating to the purchase of the Units with any Unit Purchaser;

(b) The Sales Agreement shall comply with all requirements of the Interstate Land Sales Act and the requirements of the State of Arizona, including the following:

(i) a statement that the Unit Purchaser may revoke the contract for a period of seven (7) days from the date of signing, or if applicable state law provides for a longer period, the longer period shall be stated;

(ii) a statement that if the Unit Purchaser has not received the Property Report prior to executing the contract, the contract shall be revocable for two (2) years from the date the contract was signed by purchaser;

(iii) a provision which states that if the Unit Purchaser defaults under the terms of the contract, the Unit Purchaser shall receive written notice of the default, and shall have a period of twenty (20) days from the date of the notice to cure the default; and

(iv) damages payable to the seller (Borrower) under the contract must conform to the limitations in the Act, which generally limit damages to the greatest of 15% liquidated damages or actual damages.

(c) The sale is for a base price that is not less than the List Price set forth in the Price List Schedule (exclusive of any extras and/or upgrades), except that up to fifteen (15) Units may be sold to parties affiliated with The Wolff Company LLC or Vanguard City Home, LLC at not less than ninety percent (90%) of List Price, plus upgrades and extras; and the Sales Agreement

requires full payment in cash not later than closing, with no purchase money financing provided by Borrower;

(d) The Sales Agreement requires non-refundable earnest money of at least ten percent (10%) of the gross sales price which is payable at execution of the Sales Agreement;

(e) No more than two Units may be purchased by any single Unit Purchaser (including Affiliates) and the Unit Purchaser is not affiliated with Borrower except as permitted in clause (c) above;

(f) The Sales Agreement must be non-cancelable, unconditional (subject to conveyance upon completion), have no other contingencies whatsoever (except as expressly set forth below) and must not be terminable under the Interstate Land Sales Act or other Laws (or, if a Sales Agreement is by law voidable for a statutory period following execution, such Sales Agreement may be executed subject to such termination right but shall not be considered a Qualifying Sales Agreement until the Unit Purchaser's cancellation right has expired without being exercised) and Borrower shall have obtained (and delivered to Lender) a written acknowledgement from the Unit Purchaser that it has received any property report required by the State of Arizona or under the Interstate Land Sales Act;

(g) The Sales Agreement clearly identifies any upgrade required to be provided by Borrower, as seller, which upgrade and Upgrade Deposit shall comply with the requirements of Section 14.3 hereof;

(h) The Sales Agreement may not contain any outside completion or delivery dates for the Units (unless the outside delivery date is at least one hundred eight (180) days after the completion date set forth on the Construction Schedule and is subject to extension for force majeure);

(i) The Sales Agreement is not assignable by the Unit Purchaser;

(j) The Sales Agreement specifically states that the Unit Purchaser has no lien rights with respect to the Project and all of such purchaser's rights under the contract are subordinate to Lender's Mortgage and other security interests; and

(k) The Sales Agreement complies with the Interstate Land Sales Act through a HUD filing and complies with all other local and state regulations applying to condominium sales.

An agreement meeting all of the conditions required by this Agreement is referred to as a "Qualifying Sales Agreement." Borrower shall not, without the prior written consent of Lender, enter into any Sales Agreement that is not a Qualifying Sales Agreement, or any other documentation pertaining to the sale of any portion of the Project; provided, however, that the Borrower may enter into a Qualifying Sales Agreement subject to a commercially reasonable mortgage contingency for up to sixty (60) days provided such Qualifying Sales Agreements will not be deemed Qualifying Sales Agreements until the expiration or satisfaction of the mortgage contingency.